



ATTORNEY GENERAL OF TEXAS
GREG ABBOTT

October 5, 2004

Mr. Bill Sullivan
City Attorney
City of Wichita Falls
P.O. Box 1431
Wichita Falls, Texas 76307-1431

OR2004-8439

Dear Mr. Sullivan:

You ask whether certain information is subject to required public disclosure under chapter 552 of the Government Code. Your request was assigned ID# 210516.

The Wichita Falls Police Department (the "department") received a request for "all records, reports, photographs, film and videotape, audiotape recordings, notes, bench notes, as well as all items and pieces of evidence, collected for, and related to [a specified homicide investigation]." The requestor subsequently amended his request to exclude access to physical evidence, but emphasized that he still requested "copies, reproductions, 'lifts,' or other representations made of, or developed from, finger marks that unidentified persons may have left at the crime scene or on items taken from the crime scene." You state that the department has provided the requestor with the documents and photographs that are responsive to his request. You claim, however, that the requested latent fingerprint lifts constitute tangible physical evidence, and as such, are not subject to the Public Information Act (the "Act"). We have considered your arguments.

The Act applies to "public information," defined as "information that is collected, assembled, or maintained under a law or ordinance or in connection with the transaction of official business . . . by a governmental body[.]" Gov't Code § 552.002(a)(1). This office has determined that tangible physical items are not "information" as that term is contemplated under the Act. *See, e.g.*, Open Records Decision No. 581 (1990). You assert, and we agree, that the requested latent fingerprint lifts are tangible physical evidence retrieved from the crime scene, and therefore do not constitute "public information" for purposes of the Act.

Accordingly, we conclude that the Act does not require the department to make such latent fingerprint lifts available to the requestor in response to the present request. *See* Gov't Code §§ 552.002, .021.

This letter ruling is limited to the particular records at issue in this request and limited to the facts as presented to us; therefore, this ruling must not be relied upon as a previous determination regarding any other records or any other circumstances.

This ruling triggers important deadlines regarding the rights and responsibilities of the governmental body and of the requestor. For example, governmental bodies are prohibited from asking the attorney general to reconsider this ruling. Gov't Code § 552.301(f). If the governmental body wants to challenge this ruling, the governmental body must appeal by filing suit in Travis County within 30 calendar days. *Id.* § 552.324(b). In order to get the full benefit of such an appeal, the governmental body must file suit within 10 calendar days. *Id.* § 552.353(b)(3), (c). If the governmental body does not appeal this ruling and the governmental body does not comply with it, then both the requestor and the attorney general have the right to file suit against the governmental body to enforce this ruling. *Id.* § 552.321(a).

If this ruling requires the governmental body to release all or part of the requested information, the governmental body is responsible for taking the next step. Based on the statute, the attorney general expects that, within 10 calendar days of this ruling, the governmental body will do one of the following three things: 1) release the public records; 2) notify the requestor of the exact day, time, and place that copies of the records will be provided or that the records can be inspected; or 3) notify the requestor of the governmental body's intent to challenge this letter ruling in court. If the governmental body fails to do one of these three things within 10 calendar days of this ruling, then the requestor should report that failure to the attorney general's Open Government Hotline, toll free, at (877) 673-6839. The requestor may also file a complaint with the district or county attorney. *Id.* § 552.3215(e).

If this ruling requires or permits the governmental body to withhold all or some of the requested information, the requestor can appeal that decision by suing the governmental body. *Id.* § 552.321(a); *Texas Dep't of Pub. Safety v. Gilbreath*, 842 S.W.2d 408, 411 (Tex. App.—Austin 1992, no writ).

Please remember that under the Act the release of information triggers certain procedures for costs and charges to the requestor. If records are released in compliance with this ruling, be sure that all charges for the information are at or below the legal amounts. Questions or complaints about over-charging must be directed to Hadassah Schloss at the Texas Building and Procurement Commission at (512) 475-2497.

If the governmental body, the requestor, or any other person has questions or comments about this ruling, they may contact our office. We note that a third party may challenge this ruling by filing suit seeking to withhold information from a requestor. Gov't Code § 552.325. Although there is no statutory deadline for contacting us, the attorney general prefers to receive any comments within 10 calendar days of the date of this ruling.

Sincerely,

A handwritten signature in cursive script that reads "Lauren E. Kleine".

Lauren E. Kleine
Assistant Attorney General
Open Records Division

LEK/jev

Ref: ID# 210516

Enc. (w/o enclosures)

c: Mr. Dan Grothaus
305 East 63rd Street
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(w/o enclosures)